

MEMORANDUM OF UNDERSTANDING

BETWEEN THE CITY OF NEW YORK ACTING THROUGH
THE NEW YORK CITY TAXI AND LIMOUSINE COMMISSION

AND

FOR AUTHORIZATION OF TAXICAB PASSENGER ENHANCEMENT PROGRAM
SYSTEMS FOR NEW YORK CITY MEDALLION TAXIS

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is effective as of this _____ day of _____ 2013, between the City of New York, (“City”), acting by and through the New York City Taxi and Limousine Commission (“TLC”), located at 33 Beaver Street, 22nd Floor, New York, New York 10004 (the “TLC” or “Commission”), and _____, located at _____, _____ (the “Authorized TPEP Provider” or “TPEP Provider” or “Provider”). TLC and the Authorized TPEP Provider may be each referred to herein as a “Party” or collectively as the “Parties”.

Whereas, the TLC is authorized by Chapter 65 of the New York City Charter to license and regulate medallion taxicabs in the City and approve equipment for such taxicabs;

Whereas, the TLC Rules, as they may be amended from time to time (“TLC Rules”), require Medallion Owners to install Taxicab Passenger Enhancement Program Systems (also known as Taxicab Technology Systems) (“TPEP”) in all Medallion Taxicabs operating in the City;

Whereas, the TPEP must comply with Chapter 75 of the TLC Rules (“Chapter 75”);

Whereas, an Authorized TPEP Provider is an individual or Business Entity authorized by the Commission, pursuant to Chapter 75, to sell, lease, make available for use, install, service, and repair TPEPs in Medallion Taxicabs.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree to the following terms of this MOU:

Section 1. Definitions

All capitalized terms used in this MOU that are not defined herein shall have the meanings given such terms in Sections 75-03 or 51-03, as applicable, of the TLC Rules.

Section 2. Duration of the MOU

- (a) The term of this MOU shall be for a period of three (3) years, but such MOU term shall be subject to the term of the TPEP Provider’s Authorization by the TLC to sell, lease, make available for use, install, service, and repair TPEPs for Taxicabs.

- (b) Neither Chapter 75 nor this MOU grants the Authorized TPEP Provider an exclusive right to provide TPEP service to the City's taxicab fleet; accordingly, pursuant to Chapter 75, the Commission may enter into memoranda of understanding for authorization of TPEP services with other Authorized TPEP Providers.

Section 3. Duties and Responsibilities of the TPEP Provider

- (a) The Authorized TPEP Provider recognizes that its non-compliance with the provisions of this MOU and/or Chapter 75 will have a material adverse impact on the City in that it impacts the TLC and its constituents, and that the loss or damage resulting from such non-compliance is not susceptible of precise determination. In view of the difficulty of accurately ascertaining the loss or damages suffered by the City, liquidated damages payable to the City for non-compliance with the terms and conditions of this MOU or any provision of Chapter 75 are hereby fixed in paragraph (i) below and agreed to as the liquidated damages that the City will suffer by reason of such non-compliance, and not as a penalty.
- (i) In the event the Authorized TPEP Provider fails to comply with any terms of this MOU and/or Chapter 75, (x) if the non-compliance continues past the cure period provided in the Deputy Commissioner's written decision on a Notice of Non-Compliance pursuant to Section 75-02(b) of the TLC Rules ("Cure Period"), (y) the Commission issues a second Notice of Non-Compliance for failure to cure the non-compliance within the Cure Period, and (z) such failure to comply is not caused by the TLC or its agents, the Authorized TPEP Provider shall be liable to pay to the City liquidated damages, commencing on the date of receipt by the TPEP Provider of the second Notice of Non-Compliance, to be assessed as provided below. If the Deputy Commissioner's written decision on the second Notice of Non-Compliance results in a determination that the TPEP Provider cured the non-compliance in whole or in part during the Cure Period, the Commission will return the liquidated damages assessed against the TPEP Provider to the extent that the Provider cured the non-compliance:
- A. Provider's failure to comply with any requirement contained in Sections 75-02(c)(1) or 75-02(c)(3) of the TLC Rules following the Provider's non-renewal or revocation of Authorization, the amount of one hundred dollars (\$100) per affected Taxicab per day for each day or part thereof of non-compliance;
 - B. Provider's failure to obtain TLC approval prior to implementing a Modification of TPEP as required by Section 75-05(c) of the TLC Rules, the amount of one hundred dollars (\$100) per unapproved Modification per day for each day or part thereof until such Modification has been approved;
 - C. Provider's failure to demonstrate to TLC by means of fully compliant documentation of proof of insurance as described in Section 75-05(e)(8) of the TLC Rules confirmation of renewals of insurance before coverage of insurance policies expire as required by Section 75-05(f) of the TLC Rules,

the amount of one hundred dollars (\$100) per day for each day or part thereof of non-compliance;

- D. Provider's failure to comply with Section 75-09 of the TLC Rules, the amount of one hundred dollars (\$100) per occurrence of any non-compliance;
- E. Provider's failure to comply with any maintenance service requirement contained in Sections 75-20(b), (c), and (d) of the TLC Rules, the amount of one hundred dollars (\$100) per affected Taxicab per day for each day or part thereof of non-compliance;
- F. Provider's failure to provide the periodic records or reports as required by Section 75-22 of the TLC Rules in accordance with the frequencies described therein, the amount of one hundred dollars (\$100) per report or record per day for each day or part thereof of non-compliance;
- G. The failure of Provider's TPEP to conform to the specifications set forth in Sections 75-25(e)(2) or 75-25(e)(3) of the TLC Rules, the amount of one hundred dollars (\$100) per occurrence per day for each day or part thereof of non-compliance;
- H. The failure of the TPEP and/or the TPEP Provider to comply with the requirements in Section 75-25(i)(3) of the TLC Rules, the amount of one hundred dollars (\$100) per occurrence per day for each day or part thereof of non-compliance;
- I. The failure of the TPEP and/or TPEP Provider to comply with the requirements in Section 75-25(c) of the TLC Rules, the amount of one hundred dollars (\$100) per occurrence per day for each day or part thereof of non-compliance;
- J. Provider's failure to update TLC Content as required by Section 75-25(d)(2)((i)(E) of the TLC Rules by the date set forth in the applicable TLC Content notice of update received from TLC, the amount of one hundred dollars (\$100) per occurrence per day for each day or part thereof of non-compliance;
- K. Provider's failure to comply with any provision of the TLC Rules or this MOU not specified above, the amount of one hundred dollars (\$100) per affected Taxicab if the non-compliance directly affects the use or performance of any TPEP installed in a Taxicab, or in other instances per occurrence, per day for each day or part thereof of non-compliance.

(ii) Liquidated damages assessed hereunder are not intended to be nor shall they be treated as either a partial or full waiver or discharge of the City's right to indemnification, or the

Authorized TPEP Provider's obligation to indemnify the City pursuant to this MOU, or of the City's right to any other remedy provided for in this MOU or by applicable law.

(iii) Neither the failure to assess liquidated damages nor the granting of any extension of time to comply with the provisions of Chapter 75 or this MOU shall operate as a waiver or release of any claim the City may have against the Authorized TPEP Provider for either actual or liquidated damages.

(iv) Notwithstanding anything contained in this MOU, Provider's liability for liquidated damages under this Section 3(a) in the aggregate shall not exceed \$200,000 in any calendar year, or a pro rata amount for any part of a calendar year.

(b) The Authorized TPEP Provider must comply with the provisions of Section 75-11 of the TLC Rules, which relate to general and infringement indemnification.

(c) The TPEP Provider must immediately notify the TLC if the Provider knows or should have known of any illegal, unlicensed, or unauthorized activity involving the installation, maintenance, or use of a TPEP or Taximeter.

Section 4. TPEP Customer Contract

This MOU requires that the TPEP customer contract entered into between the TPEP Provider and a Medallion Owner as described in Section 75-18(b) of the TLC Rules ("Customer Contract") include the following mandatory terms and conditions as set forth in subsections (a) through (u) hereof. The TPEP Provider and Medallion Owner may agree to additional terms in the Customer Contract or make separate agreements in addition to the Customer Contract that do not conflict with or undermine the purpose of the mandatory terms and conditions set forth in subsections (a) through (u). The TPEP Provider must obtain approval from the TLC of the form of each Customer Contract the Provider intends to use. The TLC's mandatory terms for the Customer Contract are limited to the following provisions:

(a) The contract term shall be for a time period up to five (5) years, but the TPEP Provider must offer a one year contract option to the Medallion Owner. Any contract for a term of more than one year shall contain a clause acknowledging that the Medallion Owner has the option to sign a one year contract and the Medallion Owner has elected not to exercise that option.

(b) All TPEP Customer Contract terms shall be subject to the term of the TPEP Provider's Authorization.

(c) The TPEP Provider must maintain Valid TPEP Provider Authorization under Chapter 75 and comply with all of the provisions of Chapter 75 throughout the duration of the contract.

(d) The TPEP Provider agrees to provide Maintenance Service in accordance with Section 75-20 of the TLC Rules.

- (e) The TPEP Provider agrees to comply with the TPEP requirements and Service Levels as required by Section 75-21 of the TLC Rules.
- (f) The TPEP Provider agrees it shall be responsible for any and all physical damage to any Taxicab incurred by the Medallion Owner where such damage is caused by the negligence or willful conduct of the TPEP Provider or its agents while installing or maintaining the TPEP in such Taxicab. For clarity, modifications to the Taxicab, including without limitation, replacing the partition, drilling holes in the dashboard, etc. that are consistent with standard installation of TPEPs shall not constitute physical damage to the Taxicab.
- (g) The TPEP Provider agrees to maintain the insurance required by Section 75-05(e) of the TLC Rules.
- (h) Each party agrees to defend, indemnify and hold harmless the other party from and against any and all damages, fines, penalties, deficiencies, losses, liabilities and expenses (including reasonable attorneys' fees) arising from or in connection with third-party claims attributable to any of the following:
 - (i) the death or bodily injury of any agent, employee, business invitee, or business visitor or other person proximately caused by the tortious or willful conduct of the indemnifying party; or
 - (ii) the damage, loss or destruction of any real or tangible personal property proximately caused by the tortious or willful conduct of the indemnifying party. For clarity, modifications to the Taxicab, including without limitation, replacing the partition, drilling holes in the dashboard, etc., that are consistent with standard installation of TPEPs shall not constitute physical damage to the Taxicab.
- (i) The TPEP Provider agrees to defend, indemnify and hold harmless the Medallion Owner against any and all damages, fines, penalties, losses, liabilities and expenses (including reasonable attorneys' fees) arising from or in connection with any third-party claims or actions alleging infringement of a third party's intellectual property rights attributable to the provision by the TPEP Provider, or use by the Medallion Owner, Taxicab Driver, or Passenger, of the TPEP, any component thereof, or any service related to the TPEP, except to the extent the alleged infringement is due to the unauthorized alteration or use of the TPEP by the Medallion Owner, mobile application developer, or a Taxicab Driver.
- (j) Each party agrees that any limitation of liability in this contract shall not apply to:
 - (i) the obligations to provide indemnification required in subsections (h) and (i) of this Section 4; or
 - (ii) any and all damages, fines, penalties, losses, liabilities and expenses (including reasonable attorneys' fees) arising from direct claims between the parties based on damage to real or tangible personal property, death, or bodily injury caused by the tortious or willful conduct of a party.

- (k) The Medallion Owner may terminate the contract for convenience upon at least twenty (20) days' prior written notice to the TPEP Provider and payment of a termination fee of twenty-five (25%) percent of any recurring rates and charges (including any hardware lease or equipment rental fees) multiplied by the number of months remaining on the contract, not to exceed twenty-four (24) months.
- (l) Either party may terminate the contract for cause if the other party defaults in the performance of any of its material obligations under the contract, and does not cure the default within thirty (30) days of receipt of a notice of default from the non-defaulting party.
- (m) Either party may terminate the contract upon five (5) business days' written notice to the other party:
 - (i) if such other party ceases to do business as a going concern, or
 - (ii) upon the insolvency of, or commencement of any proceeding by or against, the other party, either voluntarily or involuntarily, under the Bankruptcy Code, or relating to the insolvency, receivership, liquidation, or composition of the other party for the benefit of creditors.
- (n) If a Medallion Owner is eligible and opts to terminate its contract with the TPEP Provider pursuant to Section 75-02(c)(2) of the TLC Rules, the TPEP Provider must comply with such provision, which includes continuing to provide services to the Medallion Owner as required by such provision.
- (o) The TPEP Provider must, upon receiving sufficient evidence therefor, reimburse the Medallion Owner for all Fines caused by the TPEP Provider's failure to perform as required by the TLC Rules or caused by the TPEP Provider's breach of any term or condition of the contract, provided that any such failure to perform or breach is not attributable to any acts or omissions by the Medallion Owner, any abuse or misuse of the applicable TPEP, or any *force majeure* condition, and the Medallion Owner complies with Section 58-41(c) of the TLC Rules. The term "Fine" means any and all fees, fines, or financial penalties imposed on the Medallion Owner or Taxicab Driver by the City, the TLC, or other City agency.
- (p) If the TLC, Medallion Owner or Taxicab Driver notifies the TPEP Provider in writing of a Performance Failure, the TPEP Provider must remedy the Performance Failure within a cure period of thirty (30) days following receipt of notification. If the TPEP Provider does not remedy the Performance Failure within the 30-day cure period, then the TPEP Provider must apply a five (5) percent credit of the monthly fees for the first month following the cure period. If the Performance Failure continues during the second month and subsequent months following the thirty (30) day cure period, the TPEP Provider must apply a credit of ten (10) percent of the monthly fees for the second month and for each month thereafter.
- (q) The TPEP Provider must provide to the Medallion Owner all intellectual property licenses needed to operate and use the TPEP.

- (r) Neither party may assign the contract, or any of its rights and obligations under the contract, without the prior written consent of the other party. Consent must not be unreasonably withheld or delayed.
- (s) If the TPEP Provider subcontracts any services related to the TPEP, the TPEP Provider will be fully responsible to the Medallion Owner for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by such subcontractors as the TPEP Provider is for the acts and omissions of any persons directly employed by it.
- (t) The parties agree that the contract shall be deemed to be executed in the City and State of New York, regardless of the domicile of the parties, and shall be governed by and construed in accordance with the laws of the State of New York (without regard to conflict of law principles) and the laws of the United States, where applicable.
- (u) The parties agree that any and all claims asserted by or against either party arising under or related to the contract shall solely be heard and determined either in the courts of the United States located in the City of New York or in the courts of the State of New York located in the City and County of New York.

Section 5. Functionality Compliance Timeline

The TPEP Provider must comply with all of the requirements of Section 75-25 of the TLC Rules at the time of Authorization, with the exception of the requirements described in subsections (a) and (b) below, which must be satisfied by the TPEP Provider by the dates indicated. With the exception of the third party certifications described in Section 6 of this MOU, all third party certifications required by Section 75-05 of the TLC Rules must be provided prior to the time of Authorization and reflect the requirements that have been satisfied at the time of Authorization. Additional certifications must be provided as requirements are satisfied in compliance with dates indicated in this Section 5 of the MOU unless certifications are permitted at a later date pursuant to Section 6 of this MOU.

(a) The following requirements must be satisfied by **May 15, 2013**:

75-25(a)(2)(iv)(A)-(D)	Accept entry of credit/debit/prepaid card information or intent to pay in cash before the trip is completed.
75-25(d)(2)(vii) and (ix)	Implement Contact TLC and TLC Feedback features.

(b) The following requirements must be satisfied by **June 15, 2013**:

75-25(d)(7)	Display of specified required content in English and Spanish on PIM.
-------------	--

Section 6. Third Party Certification Timeline

The TPEP Provider must provide all third party certifications required by Section 75-05 of the TLC Rules prior to Authorization with the exception of the third party certifications described in

subsections (a) and (b) below, which must be provided by the TPEP Provider by the dates indicated. Additional certifications must be provided as functionality requirements are satisfied in compliance with dates indicated in Section 5 of this MOU unless certifications are permitted at a later date pursuant to this Section 6.

(a) The following third party certifications must be provided by **June 15, 2013**:

75-05(b)(1)(ii)	Acceptance Testing third party certification.
75-05(b)(2)(ii)	Security Testing third party certification as to the requirements contained in §§75-25(f)(1)(ii) and (iii).
75-05(b)(4)(ii)	Usability Testing third party certification.

(b) *PCI Compliance Third Party Certification.* In lieu of submitting third party certification of PCI compliance pursuant to §75-05(b)(2)(ii) and §75-25(f)(1)(i) of the TLC Rules, the TPEP Provider may submit evidence that the TPEP Provider has obtained third party certification of PCI compliance in the past twelve months of a TPEP system or Taximeter point of sale system substantially similar to the TPEP system submitted for Authorization, along with the most recent PCI scan of the TPEP or Taximeter point of sale system, and the affidavit or affirmation attached to this MOU as Attachment A. The TPEP Provider must swear to and affirm that any and all changes made to the previously certified system prior to its submission for TPEP Authorization have had no impact on the security of its systems and that the third party certification of PCI compliance provided is still valid. The TLC, in its sole discretion, will decide if the previously certified system is substantially similar to the TPEP system submitted for Authorization. The TPEP Provider must provide the original security test plan for PCI compliance, the original third party certification of PCI compliance, and any quarterly reports on the security of the system issued by its third party certifier as evidence of its previous third party certification of PCI compliance along with Attachment A. Additionally, any TPEP Provider who has submitted the affidavit in Attachment A must submit the security test plan for compliance with §75-25(f)(1) and third party certification of PCI compliance for the TPEP system included in its application for Authorization within twelve months of the date of the previous certification of PCI compliance provided with Attachment A.

Section 7. Non-Compliance

- (a) The TPEP Provider’s non-compliance with any of the provisions of Chapter 75 shall be deemed to be non-compliance with this MOU.
- (b) The TPEP Provider’s non-compliance with any of the terms and conditions of this MOU shall be deemed to be non-compliance with Chapter 75.
- (c) The TPEP Provider’s non-compliance with any of the terms and conditions of this MOU may result in the issuance of a Notice of Non-Compliance pursuant to Section 75-02(b) of the TLC Rules, and may result in the revocation of the Provider’s Authorization.

Section 8. Choice of Law

- (a) The parties agree that this MOU shall be deemed to be executed in the City and State of New York, regardless of the domicile of the parties, and shall be governed by and construed in accordance with the laws of the State of New York (without regard to conflict of law principles) and the laws of the United States, where applicable.
- (b) The parties agree that any and all claims asserted by or against either party arising under or related to this MOU shall solely be heard and determined either in the courts of the United States located in the City of New York or in the Courts of the State of New York located in the City and County of New York.

Section 9. Sign Counterparts

This MOU may be signed in counterparts. The MOU shall be the sum of the counterparts.

IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the date above first written

City of New York
Taxi and Limousine Commission

By: _____
Name: Conan Freud
Deputy Commissioner Finance
Management & Administration

By: _____
Name:
Title:

Approved as to Form
Certified to Legal Authority

Acting Corporation Counsel

Date:

ACKNOWLEDGEMENT BY THE CITY OF NEW YORK

STATE OF NEW YORK)
:SS.:
COUNTY OF NEW YORK)

ON THE ____ DAY OF _____, 2013, BEFORE ME PERSONALLY CAME CONAN FREUD, TO ME KNOWN AND KNOWN TO ME TO BE THE DEPUTY COMMISSIONER FINANCE MANAGEMENT & ADMINISTRATION OF THE NEW YORK CITY TAXI AND LIMOUSINE COMMISSION, THE PERSON DESCRIBED AS SUCH IN AND WHO AS SUCH EXECUTED THE FOREGOING AGREEMENT AS FOR THE PURPOSES THEREIN MENTIONED.

NOTARY PUBLIC OR COMMISSIONER OF DEEDS

ACKNOWLEDGEMENT BY CORPORATION

STATE OF)
:SS.:
COUNTY OF)

ON THE ____ DAY OF _____ IN THE YEAR 2013, BEFORE ME PERSONALLY CAME _____ TO ME KNOWN, WHO, BEING BY ME DULY SWORN, DID DEPOSE AND SAY THAT (S)HE RESIDES IN _____; THAT (S)HE IS THE _____ OF _____, THE CORPORATION DESCRIBED IN AND WHICH EXECUTED THE ABOVE INSTRUMENT; AND THAT (S)HE SIGNED HIS/HER NAME THERETO BY AUTHORITY OF THE BOARD OF DIRECTORS OF SAID CORPORATION

NOTARY PUBLIC OR COMMISSIONER OF DEEDS

ACKNOWLEDGEMENT BY THE CITY OF NEW YORK

STATE OF NEW YORK)
:SS.:
COUNTY OF NEW YORK)

ON THE ____ DAY OF _____, 2013, BEFORE ME PERSONALLY CAME CONAN FREUD, TO ME KNOWN AND KNOWN TO ME TO BE THE DEPUTY COMMISSIONER FINANCE MANAGEMENT & ADMINISTRATION OF THE NEW YORK CITY TAXI AND LIMOUSINE COMMISSION, THE PERSON DESCRIBED AS SUCH IN AND WHO AS SUCH EXECUTED THE FOREGOING AGREEMENT AS FOR THE PURPOSES THEREIN MENTIONED.

NOTARY PUBLIC OR COMMISSIONER OF DEEDS

ACKNOWLEDGEMENT BY CORPORATION

STATE OF)
:SS.:
COUNTY OF)

ON THE ____ DAY OF _____ IN THE YEAR 2013, BEFORE ME PERSONALLY CAME _____ TO ME KNOWN, WHO, BEING BY ME DULY SWORN, DID DEPOSE AND SAY THAT (S)HE RESIDES IN _____; THAT (S)HE IS THE _____ OF _____, THE CORPORATION DESCRIBED IN AND WHICH EXECUTED THE ABOVE INSTRUMENT; AND THAT (S)HE SIGNED HIS/HER NAME THERETO BY AUTHORITY OF THE BOARD OF DIRECTORS OF SAID CORPORATION

NOTARY PUBLIC OR COMMISSIONER OF DEEDS

Attachment A

AFFIDAVIT

STATE OF NEW YORK } : SS

COUNTY OF NEW YORK }

I, _____, in my official capacity as _____ of
_____ being duly sworn, hereby deposes and says:

- 1) The attached third party certification of PCI compliance of a TPEP or Taximeter point of sale system is currently valid.
- 2) The TPEP or Taximeter point of sale system certified as PCI compliant by the attached third party certification is or has been modified to be the TPEP system included in the application for Authorization.
- 3) Any and all changes made to the previously certified TPEP or Taximeter point of sale system prior to its submission for Authorization have had no impact on the security of its systems.

Dated: New York, New York
_____, 2013

Signature

Sworn to before me
this ___ day of _____, 2013

Notary Public